

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EMMANUEL HERRON,

Defendant.

No. CR 06-4072-MWB

**INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, I am giving you these Instructions to help you better understand the trial and your role in it and to instruct you on the law that you must apply in this case. Consider these instructions, together with all written and oral instructions given to you during or at the end of the trial, and apply them as a whole to the facts of the case. In considering these instructions, the order in which they are given is not important.

As explained during jury selection, in an Indictment, a Grand Jury charges defendant Herron with two separate offenses, both of which allegedly involved or were related to trafficking in cocaine base, which is commonly called “crack cocaine.” The offenses charged are the following: In **Count 1**, the Indictment charges defendant Herron with conspiracy to distribute crack cocaine; in **Count 2**, the Indictment charges defendant Herron with possessing a firearm in furtherance of the drug-trafficking conspiracy charged in Count 1. As I also explained during jury selection, an Indictment is simply an accusation. It is not evidence of anything. The defendant is presumed to be innocent of a particular offense charged unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt. The defendant has pled not guilty to the crimes charged against him.

Your duty is to decide from the evidence whether the defendant is not guilty or guilty of each of the charges against him. You will find the facts from the evidence. You are entitled to consider that evidence in light of your own observations and experiences. You may use reason and common sense to draw

conclusions from facts that have been established by the evidence. You will then apply the law, as stated in these instructions and any instructions given during the course of trial, to the facts to reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in these instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, based solely on the evidence, your common sense, and the law as stated in these instructions. Do not take anything I have done during jury selection or that Judge Bennett may say or do during the trial as indicating what we think of the evidence or what we think your verdict should be. Similarly, do not conclude from any ruling or other comment that I have made or that Judge Bennett may make that we have any opinions on how you should decide the case.

Please remember that only defendant Emmanuel Herron, not anyone else, is on trial here. Also, remember that this defendant is on trial *only* for the offenses charged against him in the Indictment, not for anything else.

The defendant is entitled to have each charge against him considered separately based solely on the evidence that applies to that charge. *Therefore, you must return a separate, unanimous verdict on each offense charged against the defendant.* However, if you find the defendant not guilty of the charge of “conspiracy” in Count 1, then you *cannot* find him guilty of the charge of “possessing a firearm in furtherance of the drug-trafficking conspiracy” in Count 2.

INSTRUCTION NO. 2 - PRELIMINARY MATTERS

Before I turn to specific instructions on the offenses charged in this case, I must explain some preliminary matters.

“Elements”

The offenses charged in this case each consist of “elements,” which the prosecution must prove beyond a reasonable doubt against a defendant in order to convict that defendant of that offense. I will summarize in the following instructions the elements of the offenses with which the defendant is charged.

Timing

The Indictment alleges that the offenses charged were committed “from about” one date “through” another date or “on or about” a certain date. The prosecution does not have to prove with certainty the exact date of an offense charged. It is sufficient if the evidence establishes that an offense occurred within a reasonable time of the date or time period alleged for that offense in the Indictment.

Controlled substances

In these instructions, when I refer to a “controlled substance,” I mean any drug or narcotic the manufacture, possession, possession with intent to distribute, or distribution of which is prohibited or regulated by federal law. “Cocaine base,” which is commonly called “crack cocaine,” is a “controlled substance.”

“Intent” and “Knowledge”

The elements of the charged offenses may require proof of what the defendant “intended” or “knew.” Where what a defendant “intended” or “knew” is an element of an offense, the defendant’s “intent” and “knowledge” must be proved beyond a reasonable doubt. “Intent” and “knowledge” are mental states. It is seldom, if ever, possible to determine directly the operations of the human mind. However, “intent” and “knowledge” may be proved like anything else, from reasonable inferences and deductions drawn from the facts proved by the evidence. Therefore, you may consider any statements made or acts done by the defendant and all of the facts and circumstances in evidence to aid you in the determination of his “knowledge” or “intent.”

An act was done “knowingly” if the defendant was aware of the act and did not act through ignorance, mistake, or accident. The prosecution is not required to prove that the defendant knew that his acts or omissions were unlawful. An act was done “intentionally” if it was done voluntarily, without coercion, and not because of ignorance, mistake, accident, or inadvertence.

“Possession,” “Distribution,” and “Delivery”

The offenses charged in the Indictment allegedly involved “possession” and “distribution” of crack cocaine. “Distribution,” in turn, involves “delivery.” The following definitions of “possession,” “distribution,” and “delivery” apply in these instructions:

The law recognizes several kinds of “possession.” A person who knowingly has direct physical control over an item, at a given time, is then in “actual

possession” of it. A person who, although not in actual possession, has both the power and the intention at a given time to exercise control over an item, either directly or through another person or persons, is then in “constructive possession” of it. If one person alone has actual or constructive possession of an item, possession is “sole.” If two or more persons share actual or constructive possession of an item, possession is “joint.” Whenever the word “possession” is used in these instructions, it includes “actual” as well as “constructive” possession and also “sole” as well as “joint” possession.

In addition, mere presence where an item was found or mere physical proximity to the item is insufficient to establish “possession” of that item. Knowledge of the presence of the item, at the same time one has control over the item or the place in which it was found, is required. Thus, in order to establish a person’s “possession” of an item, the prosecution must establish that, at the same time, (a) the person knew of the presence of the item; (b) the person intended to exercise control over the item or place in which it was found; (c) the person had the power to exercise control over the item or place in which it was found; and (d) the person knew that he had the power to exercise control over the item or place in which it was found.

The term “distribute” means to deliver a controlled substance to the actual or constructive possession of another person. The term “deliver” means the actual, constructive, or attempted transfer of a controlled substance to the actual or constructive possession of another person. It is not necessary that money or anything of value change hands. The law prohibits “distribution” of a controlled

substance and an agreement to “distribute” a controlled substance; the prosecution does not have to prove that there was or was intended to be a “sale” of a controlled substance to prove distribution or a conspiracy to distribute that controlled substance.

* * *

I will now give you more specific instructions about the offenses charged in the Indictment.

INSTRUCTION NO. 3 - COUNT 1: NATURE OF THE CONSPIRACY OFFENSE

Count 1 of the Indictment charges that, from about July 2006 through July 20, 2006, defendant Herron knowingly and unlawfully conspired with other persons, known and unknown to the Grand Jury, to distribute 50 grams or more of crack cocaine. Mr. Herron denies that he committed this offense.

For you to find the defendant guilty of this “conspiracy” offense, the prosecution must prove beyond a reasonable doubt *all* of the following essential elements:

One, between about July 2006 through July 20, 2006, two or more persons reached an agreement or came to an understanding to distribute crack cocaine;

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

Three, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

For you to find the defendant guilty of the “conspiracy” offense charged in **Count 1** of the Indictment, the prosecution must prove *all* of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the “conspiracy” offense charged in **Count 1** of the Indictment.

In the next instructions, I will explain each of these elements in more detail.

INSTRUCTION NO. 4 - COUNT 1: ELEMENTS OF THE CONSPIRACY OFFENSE

The elements of the “conspiracy” offense, in more detail, are the following.

One, between about July 2006 through July 20, 2006, two or more persons reached an agreement or came to an understanding to distribute crack cocaine.

The prosecution must prove that the defendant reached an agreement or understanding with at least one other person. The other person or persons do not have to be defendants, or named in the Indictment, or otherwise charged with a crime. There is no requirement that any other conspirators be named as long as you find beyond a reasonable doubt that there was at least one other co-conspirator besides the defendant.

The “agreement or understanding” need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme. In determining whether the alleged agreement existed, you may consider the actions and statements of all of the alleged participants, whether they are charged as defendants or not. The agreement may be inferred from all of the circumstances and the conduct of the alleged participants.

The Indictment alleges that the conspirators agreed to distribute crack cocaine. To assist you in determining whether there was an agreement to commit the “distributing” offense identified as the objective of the conspiracy, you should consider the elements of that offense. The elements of “distributing crack cocaine” are the following: (1) on or about the date alleged, a person

intentionally distributed crack cocaine to another; and (2) at the time of the distribution, the person knew that what he or she was distributing was a controlled substance.

Keep in mind, however, that to prove the “conspiracy” offense, the prosecution must prove that there was an *agreement* to distribute crack cocaine. The prosecution is *not* required to prove that this “objective” *was actually committed*. In other words, the question is whether the defendant *agreed* to distribute crack cocaine, not whether the defendant or someone else *actually committed* such an offense.

If there was no agreement, there was no conspiracy. Similarly, if you find that there was an agreement, but you find that the defendant did not join in that agreement, or did not know the purpose of the agreement, then you cannot find the defendant guilty of the “conspiracy” charge.

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others, or merely associating with others does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy, but who happens to act in a way that advances some purpose of one, does not thereby become a member. Similarly, the defendant’s mere knowledge of the existence of a conspiracy, or mere knowledge that the objective of the conspiracy is being contemplated or attempted, is not enough to prove that the defendant joined in the conspiracy; rather, the prosecution must establish some

degree of knowing involvement and cooperation by the defendant.

On the other hand, a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further, it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

In deciding whether the defendant voluntarily and intentionally joined in the agreement, you must consider only evidence of his own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that the defendant said or did.

Three, at the time the defendant joined in the agreement or understanding, the defendant knew the purpose of the agreement or understanding.

The defendant must have known of the existence and purpose of the conspiracy. Without such knowledge, the defendant cannot be guilty of conspiracy, even if his acts furthered the conspiracy. You may not find that the defendant knew the purpose of the agreement or understanding if you find that the defendant was simply careless. A showing of negligence, mistake, or carelessness is not sufficient to support a finding that the defendant knew the purpose of the agreement or understanding.

For you to find the defendant guilty of the “conspiracy” offense charged in **Count 1** of the Indictment, the prosecution must prove beyond a reasonable doubt *all* of the essential elements of this offense. Otherwise, you must find the defendant not guilty of the “conspiracy” offense charged in **Count 1** of the Indictment.

In addition, if you find the defendant guilty of this “conspiracy” offense, then you must also determine beyond a reasonable doubt the quantity of any crack cocaine actually involved in the conspiracy for which the defendant can be held responsible, as explained in Instruction No. 6.

Finally, if you find beyond a reasonable doubt that the conspiracy charged in the Indictment existed, and that the defendant was one of its members, then you may consider acts knowingly done and statements knowingly made by the defendant’s co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant, even though those acts were done or those statements were made in the defendant’s absence and without his knowledge. This includes acts done or statements made before the defendant joined the conspiracy. On the other hand, an act or statement by someone other than the defendant that was not made during and in furtherance of the conspiracy cannot be attributed to the defendant in this way.

INSTRUCTION NO. 5 - COUNT 1: SPECIFIC DEFENSE

In addition to denying that the prosecution has proved beyond a reasonable doubt all of the essential elements of the “conspiracy” offense charged in **Count 1**, defendant Emmanuel Herron also asserts the following specific defense to that charge:

Defendant Herron contends that, even if there is evidence of a buyer-seller relationship between himself and another person involving crack cocaine, that evidence is not sufficient to establish a conspiracy, even where the buyer intends to resell the crack cocaine. You are instructed that proof of a mere buyer-seller agreement, without any prior or contemporaneous, shared understanding, does not support a conspiracy conviction, because there is no common illegal purpose. Instead, in such circumstances, the buyer’s purpose is to buy; the seller’s purpose is to sell.

More specifically, there must be an agreement on the common illegal purpose of distributing crack cocaine, that is, some understanding beyond a mere sales agreement, for there to be a conspiracy to distribute crack cocaine. Thus, to establish the existence of a conspiracy, the government must prove beyond a reasonable doubt that there was an agreement among individuals to achieve the common illegal purpose of distributing crack cocaine. Remember that proof of a formal, explicit agreement is not necessary. Thus, a sales transaction, placed in context, can support a conspiracy conviction, if you can reasonably impute a

conspiratorial agreement to the parties' actions and the circumstances surrounding the sales transaction. For example, an on-going understanding involving distribution of large quantities of crack cocaine over a significant period of time is evidence from which you may infer the necessary agreement to distribute crack cocaine, rather than a mere buyer-seller relationship. Similarly, evidence that one party "fronted" crack cocaine to another is evidence from which you may infer the necessary agreement to distribute crack cocaine, rather than a mere buyer-seller relationship. "Fronting" means that one party gave another crack cocaine, the recipient sold some and kept some for himself, and the recipient then paid back the provider with the proceeds of his own sales of the crack cocaine.

In deciding whether there was a conspiracy or only a buyer-seller relationship, you should consider all of the evidence. In doing so, you should consider the following factors, which, if established, may suggest an illegal agreement to distribute crack cocaine, rather than a buyer-seller relationship: (1) whether the transaction involved large quantities of crack cocaine; (2) whether the parties had a standardized way of doing business over time; (3) whether the sales were on credit or on consignment; (4) whether the parties had a continuing relationship; (5) whether the seller had a financial stake in a resale by the buyer; and (6) whether the parties had an understanding that the crack cocaine would be resold. However, keep in mind that no single factor necessarily indicates that the defendant was involved in a conspiracy, just as the absence of a single factor does not necessarily indicate that the defendant was engaged in a simple buyer-seller relationship.

In considering defendant Herron's specific defense to the "conspiracy" charge in Count 1, remember that the burden never shifts to a defendant in a criminal case to prove his specific defense or otherwise to prove his innocence. Rather, the prosecution must prove beyond a reasonable doubt all the essential elements of an offense for you to find the defendant guilty of that offense.

INSTRUCTION NO. 6 - QUANTITY OF CRACK COCAINE

The offense charged in **Count 1** of the Indictment allegedly involved crack cocaine. Specifically, the Indictment charges that the “conspiracy” offense in **Count 1** involved 50 grams or more of crack cocaine. Even though a specific quantity of crack cocaine is charged, the prosecution does not have to prove that the offense involved the amount or quantity of the crack cocaine that is alleged in the Indictment. However, *if* you find the defendant guilty of the offense charged in **Count 1**, *then* you must determine the following matters *beyond a reasonable doubt*: (1) whether that offense actually involved crack cocaine; and if so, (2) the *total quantity*, in grams, of the crack cocaine involved in that offense for which the defendant can be held responsible. In so doing, you may consider all of the evidence in the case that may aid in the determination of these issues.

Responsibility

A defendant guilty of ***conspiracy*** to distribute crack cocaine, as charged in **Count 1** of the Indictment, is responsible for the quantities of crack cocaine that he actually distributed or agreed to distribute. Such a defendant is also responsible for those quantities of crack cocaine that fellow conspirators distributed or agreed to distribute, if you find that the defendant could have reasonably foreseen, at the time that he joined the conspiracy or while the conspiracy lasted, that those prohibited acts were a necessary or natural consequence of the conspiracy.

Determination of quantity and verdict

If you have found the defendant guilty of **Count 1**, then you must determine beyond a reasonable doubt the *total quantity*, in *grams*, of the crack cocaine involved in that offense for which you find the defendant can be held responsible. You must then indicate that quantity in the Verdict Form. You may find more or less than the charged quantity of crack cocaine, but you must find that the quantity you indicate in the Verdict Form has been proved beyond a reasonable doubt as the quantity for which the defendant can be held responsible on the “conspiracy” offense charged in **Count 1**.

In making your determination of quantity as required, it may be helpful to remember that one pound is approximately equal to 453.6 grams, and that one ounce is approximately equal to 28.34 grams.

**INSTRUCTION NO. 7 - COUNT 2:
THE FIREARM OFFENSE**

Count 2 of the Indictment charges that, on or about July 20, 2006, defendant Herron possessed a firearm, that is, a Colt 380 Auto semi-automatic handgun, serial number RC01243, in furtherance of a drug-trafficking crime for which he may be prosecuted in a court of the United States, that is, conspiracy to distribute crack cocaine, as described in Count 1 of the Indictment. Mr. Herron denies that he committed this offense.

For you to find the defendant guilty of this offense, the government must prove *both* of the following essential elements beyond a reasonable doubt:

One, on or about July 20, 2006, the defendant committed the “conspiracy” offense charged in **Count 1** of the Indictment.

If you found the defendant not guilty of the “conspiracy” offense charged in **Count 1**, then you cannot find him guilty of the firearm offense charged in **Count 2**, even if you find that he possessed a firearm in furtherance of some other drug-trafficking crime.

Two, the defendant knowingly possessed the firearm alleged in furtherance of the drug-trafficking conspiracy charged in **Count 1** of the indictment.

The Indictment charges that the defendant knowingly possessed a Colt 380 Auto semi-automatic handgun, serial number RC01243, in furtherance of the drug-trafficking conspiracy charged in Count 1. “Knowledge” and “possession” were both defined for you in Instruction No. 2, beginning on page 4. “Furtherance”

should be given its plain meaning, which is “the act of furthering, advancing, or helping forward.” Thus, to prove that the defendant “possessed a firearm in furtherance of the drug-trafficking conspiracy,” it is not enough for the prosecution to prove that the defendant simultaneously possessed crack cocaine and a firearm or that he possessed the firearm at the time that he conspired to distribute crack cocaine. Instead, the prosecution must prove a connection between the defendant’s possession of the firearm and the underlying drug-trafficking conspiracy.

Therefore, in order to prove this element, the prosecution must prove beyond a reasonable doubt that the defendant possessed the firearm alleged and that the firearm had some purpose or effect with respect to the drug-trafficking conspiracy. The presence and involvement of the firearm cannot just be the result of accident or coincidence. The firearm must have facilitated the drug-trafficking offense. For example, the handy availability of a firearm near drugs, drug paraphernalia, or drug money may support an inference that the defendant possessed the firearm at the ready to protect the drugs, the drug money, or the defendant during a drug transaction, such that the firearm facilitated the drug-trafficking crime.

For you to find the defendant guilty of the “firearm offense” charged in **Count 2** of the Indictment, the prosecution must prove beyond a reasonable doubt both of the essential elements of this offense. Otherwise, you must find the defendant not guilty of the “firearm offense” charged in **Count 2** of the Indictment.

INSTRUCTION NO. 8 - PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

Defendant Emmanuel Herron is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from his arrest or charge or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial. That presumption alone is sufficient to find him not guilty. The presumption of innocence may be overcome as to the defendant only if the prosecution proves, beyond a reasonable doubt, *all* of the elements of an offense charged against him.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant to prove his innocence. Therefore, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution. Similarly, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

Unless the prosecution proves beyond a reasonable doubt that the defendant has committed each and every element of an offense charged, you must find the defendant not guilty of that offense.

INSTRUCTION NO. 9 - REASONABLE DOUBT

I have previously instructed you that, for you to find the defendant guilty of a charged offense, the prosecution must prove that charge “beyond a reasonable doubt.” A reasonable doubt may arise from the evidence produced by either the prosecution or the defendant, keeping in mind that no defendant ever has the burden or duty of calling any witnesses or producing any evidence. A reasonable doubt may also arise from the prosecution’s lack of evidence. A reasonable doubt is a doubt based upon reason and common sense. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 10 - DEFINITION OF EVIDENCE

Your verdict must be based only on the evidence presented in this case and these and any other instructions that may be given to you during the trial. Evidence is:

1. Testimony.
2. Exhibits that are admit into evidence.
3. Stipulations, which are agreements between the parties.

Evidence may be “direct” or “circumstantial.” The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

A particular item of evidence is sometimes admitted only for a limited purpose, and not for any other purpose. Judge Bennett will tell you if that happens, and instruct you on the purposes for which the item can and cannot be used.

The fact that an exhibit may be shown to you does not mean that you must rely on it more than you rely on other evidence.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony Judge Bennett tells you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

The weight of the evidence is not determined merely by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the

weight of the evidence is not determined merely by the number or volume of documents or exhibits. The weight of the evidence depends upon its quality, which means how convincing it is, and not merely upon its quantity. For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict his testimony. The quality and weight of the evidence are for you to decide.

INSTRUCTION NO. 11 - CREDIBILITY AND IMPEACHMENT

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the witness's drug or alcohol use or addiction, if any, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe. In deciding whether or not to believe a witness, keep in mind that people sometimes see or hear things differently and sometimes forget things. You need to consider, therefore, whether a contradiction results from an innocent misrecollection or sincere lapse of memory, or instead from an intentional falsehood or pretended lapse of memory.

If the defendant testifies, you should judge his testimony in the same manner in which you judge the testimony of any other witness.

Ordinarily, witnesses may only testify to factual matters within their personal knowledge. However, you may hear evidence from persons described as experts. Persons may become qualified as experts in some field by knowledge, skill, training, education, or experience. Such experts may state their opinions on matters in that field and may also state the reasons for their opinions. You should consider expert testimony just like any other testimony. You may believe all of what an expert says,

only part of it, or none of it, considering the expert's qualifications, the soundness of the reasons given for the opinion, the acceptability of the methods used, any reason the expert may be biased, and all of the other evidence in the case.

Just because a witness works in law enforcement or is employed by the government does not mean you should give more weight or credence to such a witness's testimony than you give to any other witness's testimony.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight you think it deserves.

INSTRUCTION NO. 12 - BENCH CONFERENCES AND RECESSES

During the trial it may be necessary for Judge Bennett to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please be patient, because while you are waiting, the judge and the lawyers are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error, and to save your valuable time. The judge and the attorneys will, of course, do what they can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 13 - OBJECTIONS

The lawyers may make objections and motions during the trial that Judge Bennett must rule upon. If the court sustains an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. Also, the lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer has made objections.

INSTRUCTION NO. 14 - NOTE-TAKING

If you want to take notes during the trial, you may, but be sure that your note-taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your own individual responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes on your chair. At the end of the trial, you may take your notes out of the notebook and keep them, or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

You will notice that we have an official court reporter making a record of the trial. However, we will not have typewritten transcripts of this record available for your use in reaching your verdict.

INSTRUCTION NO. 15 - CONDUCT OF THE JURY DURING TRIAL

To insure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by the court. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers, or witnesses involved in this case—you should not even pass the time of day with any of them. It is important that you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about

anyone involved with it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research—on the Internet, in dictionaries, in libraries, in the newspapers, or in any other way—or make any investigation *about this case* on your own. You must decide this case based on the evidence presented in court.

Seventh, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Eighth, if at anytime during the trial you have a problem that you would like to bring to the court's attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will deliver it to the judge. Everyone wants you to be comfortable, so please do not hesitate to inform the judge or a Court Security Officer of any problem.

The remaining instructions are reserved until after the evidence has been presented and the prosecution and the defense have made their closing arguments to summarize and interpret the evidence for you. However, keep in mind that closing arguments, like opening statements, are not evidence.

INSTRUCTION NO. 16 - DUTY TO DELIBERATE

Now that you have heard the evidence and arguments of the prosecution and defense, it is time for you to retire to deliberate on your verdict. However, before you do so, I must give you some instructions on deliberations.

A verdict must represent the considered judgment of each juror. The defendant is entitled to have each charge against him considered separately based solely on the evidence that applies to that charge. *Therefore, you must return a separate, unanimous verdict on each offense charged against the defendant.*

It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on a particular offense charged, then the defendant should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for

the defendant on that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes the defendant's guilt beyond a reasonable doubt on a particular offense charged, then your vote should be for a verdict of guilty against the defendant on that offense, and if all of you reach that conclusion, then the verdict of the jury must be guilty for the defendant on that offense. As you were instructed earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of an offense charged against the defendant, or you cannot find the defendant guilty of that offense.

Remember, also, that the question before you can never be whether the government wins or loses the case. The government, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

INSTRUCTION NO. 17 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, if the defendant is guilty, the sentence to be imposed is my responsibility. You may not consider punishment of defendant Emmanuel Herron in any way in deciding whether the prosecution has proved its case against him beyond a reasonable doubt.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. *Remember that you should not tell anyone—including me—how your votes stand numerically.*

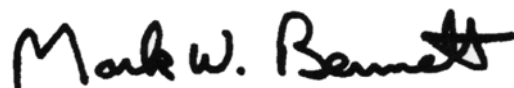
Fourth, your verdict must be based solely on the evidence and on the law in these instructions. Therefore, you must return a separate, unanimous verdict on each charge against the defendant. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Fifth, in your consideration of whether the defendant is not guilty or guilty of the offenses charged, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant on any offense charged unless you would return the same verdict for that

charge without regard to the defendant's race, color, religious beliefs, national origin, or sex. To emphasize the importance of this consideration, the verdict form contains a certification statement. Each of you should carefully read the statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects the manner in which each of you reached your decision.

Finally, I am giving you the verdict form. A verdict form is simply the written notice of the decision that you reach in this case. You will take the verdict form to the jury room. When you have reached a unanimous verdict, your foreperson must complete one copy of the verdict form and all of you must sign that copy to record your individual agreement with the verdict and to show that it is unanimous. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict. When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

DATED this 28th day of November, 2006.

A handwritten signature in black ink that reads "Mark W. Bennett". The signature is written in a cursive style with a horizontal line underneath the name.

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EMMANUEL HERRON,

Defendant.

No. CR 06-4072-MWB

VERDICT FORM

As to defendant Emmanuel Herron, we, the Jury, unanimously find as follows:

COUNT 1: THE CONSPIRACY OFFENSE		VERDICT
Step 1: Verdict	On the “conspiracy” charge in Count 1 , as explained in Instruction Nos. 3 and 4, please mark your verdict. <i>(If you found the defendant “not guilty,” do not consider the question in Step 2. Instead, go on to consider your verdict on Count 2. However, if you found the defendant “guilty” of Count 1, please answer the question in Step 2 of this section of the Verdict Form.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2: Quantity of Crack Cocaine	If you found the defendant “guilty” of the “conspiracy” charge in Count 1 , please indicate the quantity of crack cocaine involved in the offense for which the defendant can be held responsible. <i>(Quantity of crack cocaine is explained in Instruction No. 6.)</i>	
	<input type="text"/> grams of crack cocaine	

COUNT 2: THE FIREARM OFFENSE	VERDICT
On the charge of "possession of a firearm in furtherance of a drug-trafficking crime," as charged in Count 2 and explained in Instruction No. 7, please mark your verdict. <i>(Remember that you cannot find the defendant guilty of this offense unless you have found the defendant guilty of the drug-trafficking conspiracy offense charged in Count 1.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
CERTIFICATION	
By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the offenses charged regardless of the race, color, religious beliefs, national origin, or sex of the defendant.	

Date

Foreperson

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror